

OCT 11 2005**NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,****Plaintiff - Appellee,****v.****JOAQUIN CHAVEZ-CRUZ,****Defendant - Appellant.****No. 04-30213****D.C. No. CR-03-2247-FVS****MEMORANDUM*****On Remand from the United States Supreme Court****Before: LEAVY, McKEOWN, and BERZON, Circuit Judges**

On December 3, 2004, we filed a memorandum disposition affirming Joaquin Chavez-Cruz's sentence. On February 28, 2005, the Supreme Court granted Chavez-Cruz's petition for a writ of certiorari, vacated our judgment, and remanded for further consideration in light of *United States v. Booker*, 125 S. Ct. 738 (2005). The record does not show how the district court would have proceeded had it known that the Sentencing Guidelines were advisory rather than

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

mandatory. Accordingly, we remand for the district court to answer the question whether the sentence would have been materially different if it had known that the Guidelines were advisory. *See United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc); *United States v. Moreno-Hernandez*, No. 03-30387, slip op. 7773, 7793-94 (9th Cir. July 5, 2005) (amended opinion).

REMANDED.